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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,546	08/13/2001	Angelo Speranza	Rockco P32AUS	7144

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EXAMINER

TRAN, THUY VAN

ART UNIT	PAPER NUMBER
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3652

16

DATE MAILED: 08/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/928,546

Applicant(s)

Speranza

Examiner

Thuy V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- ~~Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.~~
- ~~If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.~~
- ~~If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.~~
- ~~Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).~~
- ~~Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).~~

## Status

- 1) ☒ Responsive to communication(s) filed on Apr. 12, 2002 and May 6, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 9-13, and 15-46 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9-13, and 15-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Apr 12, 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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### **DETAILED ACTION**

In response to the supplemental amendment filed on May 6, 2002, the previous office action dated May 20, 2002 is hereby withdrawn. A new office action is follow.

#### ***Reissue Applications***

1. While there is concurrent litigation related to this reissue application, action in this reissue application will NOT be stayed because of applicant's request that the application be examined at this time. Due to the related litigation status of this reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED.

#### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the citizenship of each inventor.

The declaration must identify the foreign application on which foreign priority is being claimed by specifying the application number, country, day, month, and year of its filing as required by 37 CFR 1.63(c). If the original patent contains a claimed for foreign priority, such claim must also be made in the reissue application in order to retain priority to the earlier effective filing date.

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***Drawings***

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on April 12, 2002 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Note, in-column 33, lines 41-44 of the originally filed application, Applicant discloses “where the racks loaded with now used trays are transferred from the trolley into a vehicle which returns the used trays and utensils to the supply location 30 for cleaning and reloading”. The question is whether or not the proposed drawing correction filed on April 12, 2002 contains new matter relative to the newly added limitation “loading the rack back onto the transfer vehicle”. It is believed that returning the racks, loaded with used trays, from the intermediate location back to the supply location by the refrigerated transfer vehicle or any other vehicle would be the same. Thus, the proposed drawing correction and the newly added limitation “loading the rack back onto the transfer vehicle” do not contain new matter.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 23-31 and 41-46 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The disclosure fails to adequately disclose how the heating and cooling system may determine which portion of the tray needed to be warmed and which portion of the tray needed to maintain cool when both the heating and cooling units operate at the same time.

Therefore, the disclosure is not sufficiently detailed to enable one of ordinary skill in the art to make or use the claimed invention without undue experimentation.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 21 and 23-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 21, the recitation "to regenerate the apportioned food of the plurality of trays of the racks", found in lines 15-16, renders the claim indefinite because it is not understood what Applicant meant by "to regenerate the apportioned food". Same problem occurs in claims 23-46 as well.

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***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-5, 7-13 and 15-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Colato et al. 4,103,736.

Colato et al. '736 disclose a method of preparing and transporting food comprising the steps of preparing food at a first location; apportioning the prepared food onto a plurality of trays 14; loading the trays onto a manually maneuverable rack C, transporting the rack to a second location spaced from the first location by a refrigerated vehicle (column 2, lines 62-68); transferring the rack C into a movable receptacle Ca, heating and/or cooling the food while the trays 14 are supported by the rack C at the second location.

Re claims 1, 3-5, 18 and 20, Colato et al. '736 further disclose that when the meals on the trays have been consumed, the trays are return to the racks which are returned to the first location by the transferred vehicle (column 2, lines 22-37).

Re claims 7-12, see column 1, line 45 to column 3, line 8.

Re claims 25, 31, 34 and 40, the heating system and cooling system (as broadly claimed) of Colato et al. reference are demountably coupled to the receptacle Ca.

Re the recitation "the rack having no heating system and no cooling system", found in claims 41-46, respectively, could be performed by Colato reference since they are removable.

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10. Claims 2-8, 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Stromqvist 3,261,650.

Stromqvist '650 discloses a plurality of methods of preparing, transporting and dispensing food from a food prepared location (kitchen) to a remote second location (consumers). See Figures 9-16, column 1, line 11 to column 2, line 15.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 41-46 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Stromqvist 3,261,650 in view of either Pennington et al. 5,195,973, Liebermann 5,404,935 or Yerman 5,240,320.

Stromqvist '650 discloses method of preparing, transporting and dispensing food comprising the steps of preparing the food at a first location, apportioning the food onto a plurality of trays, stacking the plurality of trays, once apportioned with food, in a maneuverable rack, loading the rack onto a transport vehicle for transportation to a second location, transferring the rack to a movable receptacle having heating means, activating the heating means to regenerate

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the food, dispensing the trays to consumers for consumption once the food is sufficiently regenerated.

Stromqvist does not disclose a movable receptacle having a heating means and a cooling means. Each of the Pennington et al. '973, Liebermann '935 and Yerman '320 separately discloses that a receptacle having a heating means and a cooling means is well known in the food distributing art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the receptacle of Stromqvist to including a cooling means in order to keep hot food remaining hot and cool food remaining cool as being well known in the food distributing art.

***Response to Arguments***

13. Applicant's arguments filed April 12, 2002 and May 6, 2002, respectively, have been fully considered but they are not persuasive.

With regard to Colato reference, Applicant argues on page 14, last paragraph, that "in accordance with Applicant's invention, only the rack loaded with trays of food is transported between the central food preparation area and the remote location". Colato et al reference discloses in column 2, lines 62-68 that the racks may be transported to a remote location by an appropriate vehicle.

Applicant further argues that Colato does not state that racks are transported to remote locations without first being positioned in a refrigeration receptacle. Colato reference discloses in



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column 2, lines 67-68 that an appropriated vehicle having means for holding one or more tray racks.

In response to applicant's argument that the Stromqvist references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., method for regenerating food where meals that may include hot food items and cold food items; and a heating and cooling system are activated to regenerate the food) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).


***Conclusion***

14. Applicant's amendments filed on April 12, 2002 and May 6, 2002 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy v. Tran whose telephone number is (703) 308-2558.

TVT (TVT)

July 28, 2002

  
DONALD P. WALSH  
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